

R E A S O N S

H U M B L Y

Offered to both Houses of Parliament,

F O R

The passing of another Act for the more speedy Relief and Release

Of poor PRISONERS for DEBT.

SOME (amongst many others) of the Mischief, (as is humbly conceived) intended to be Remedied by the last Act, were, That some Creditors unreasonably Cruel, tho' themselves knew the Prisoner not worth a Great, yet would rather he should Rot and Perish in Goal then enjoy his Liberty, whereby he might preserve himself and family, and be in a Condition to serve Their Majesties, the Country, and be enabled to pay his Just Debts.

The Remedy intended, was, That Prisoners by Swearing themselves not worth Ten Pounds might be set at Liberty, as to their Persons, with a most severe Penalty on such Persons as would any way Swear Falsely, and with such other Care and Directions for the good of the Creditors, as not one but ought to deem it as much to his Advantage, as the Debtor himself.

Their Majesties in this Act have declared themselves as Nicely inclined to Relieve their poor distressed Subjects ready to perish in Prison for Debt, as any of Their Predecessors, yet such Contrivances hath been made of this Act, as hath rendered it almost useless.

And it was not to be thought, that when by the first Acts, (to which this latter Act hath relation,) when these Words *Debts or Damages* were used in the discharging Clause, it should be Construed to extend only to Persons in Execution, as the second Act expresses, to which this latter Act hath also relation, and yet in this last Act after general words of discharging, when the same words came in a Restraining Clause, it should, notwithstanding its reference to both the precedent Acts, be indefinitely extended to all sorts of Actions, by reason whereof many Thousands, as is humbly conceived, who were thereby intended to be Relieved, had no benefit thereby.

When any thing in a Statute is dubious, 'tis said by *Coke on Littleton, Fol. 79.* That the Rehearsal or Preamble of a Statute is the best way to find out the Meaning thereof, and is as a Key to open the understanding thereof. And the Preamble of this Statute, and Their Majesties intention therein is to large in favor of distressed Prisoners, that it ought to be a prevalent Inducement to make the most liberal Construction for Relief of poor Prisoners, beyond, rather than short, of the *Præsumptio*, especially if it be considered,

That the present extraordinary Poverty of many Thousands now in Prison, occasioned by their Losses, fall of Trade, and other Calamities, usually attending War, being much greater than at the time of making the former Acts; (as also His Majesties being lately Personally Engaged in the Field against the proud and invader of Religion and Property that ever Breathed in any Age,) and not knowing how soon He may be again, may have occasion for the assistance of all His Loyal Subjects, must needs render it unreasonable, that so many Thousands of them at this time should be shut up in close Prison, to gratify the Humors of such unreasonable Creditors as cannot receive any benefit thereby.

Again, if we consider the poor Prisoners in Goal for Debt, or on Actions, if they have not wherewithal to Relieve themselves, are in the most horrid Condition of any Persons on the face of the Earth: Felons, and other Criminals, are provided for in some sort by the Law of the Land, Persons that are Maimed in the War, or otherwise by any Accident, Persons through Sickness, Old Age, or any Infirmary, if not able to provide for themselves, are according to their Necessities and Qualifications provided for by Law, only such Prisoners as aforesaid, if they cannot provide for themselves, the Law makes no provision for them, and many have been denied either to ask or receive any Charity.

And it is most reasonable, that Charges which exceed One Hundred Pound principal Debt or Damages, must be Construed in Execution ascertained and made out on Record, and not barely by the Sheriff or Gaoler's Certificate, seeing they cannot know by their Writ, what Debts are principal Money, and what not; and it were very unreasonable, if a bare Charge on Original Process should here be intended, for that it would then be in the power of any Malicious Person by forged Actions to frustrate the End of this Act, by continuing them in Prison, whom this Act intended should be set at Liberty; and this is the daily practice of unreasonable Creditors.

As for Example, a Prisoner is Charged on an Assumpsit for One Hundred and Five Pound by Original Process, the Writ is (*breve*) short, and so containeth not the Cause of this Assumpsit, so as the Justices may know whether the cause of this Assumpsit were on a valuable Consideration, or not, or whether any such Assumpsit were ever made or not, or whether the Money were paid or not, nor does it contain the time of making the Assumpsit, which peradventure may be barred by the Statute of Limitation, or no Debt due. Some Men have found a way of raising an Estate, by holding Men to Bail that live far from *Westminster*, and cannot give it, and so enforce Composition. Thus was a Prisoner Sued, and continued in Prison, till freed by a decree in *Chancery*, it appearing by the Defendants Answer, that the Action did accrue Twelve Years before the Commencement of his Sute, and it appearing by Proof, that the Mo-

ney was paid accordingly; for which cause the Party, after Two Years Imprisonment, was set at liberty, with upwards of Two Hundred Pound Cost. But where one Man clearth himself after this sort, a Hundred are forced to Buy their Redemption, where nothing is due, as not able to Contest it, or to Perish in Custody.

One Mr. Martin was Charged in the Sheriffs Ward, a Hundred Males off from London, on an Action of Two Thousand Pound, held to Bail a long time, then removed himself to the Court of *Common-Pleas*, that Court upon Examining the matter, Ordered the Plaintiff to pay him Forty Pounds, which was paid down, and the Defendant never heard more of the Two Thousand Pound Action.

One Henry Deane, of St. James's Parish, is held Prisoner in the *Kings-Bench* at the Sute of *Ward Overseer*, on a Bond for performance of Articles of Five Hundred Pound enter'd into for his Friend; the Articles are perform'd, and his Friend discharged, and he may be if he will give Five Pound Ransom, which he cannot do.

And it were to be wished, That where a Prisoner stands charged with a greater Summ than One Hundred Pound principal Debt, yet is free to Swear, That all the Money remaining due, is within One Hundred Pound principal Money, that the Creditor shall admit of the Prisoners Oath, in order to his Discharge, unless the Creditor will Swear the contrary, on the peril of undergoing like Punishment, if his Oath be disproved.

How many are there Imprisoned on Clandestine Outlawries on Original Processes for great Summs, not one of a Hundred duly obtained. And it is not to be doubted, but if it were demanded of the Makers of this Act, whether their Intention was, that no Person Charged with any Action or Actions above One Hundred Pound principal Money, whether by right or wrong, should have benefit by this Act, if qualified, they would Unanimously Answer, *God forbid.*

How many Persons lie now in Prison on great Bonds, where not a Tenth Penny remains unpaid? How many on Counter-Bonds, where the Plaintiff never paid, or is like to pay, a Penny? How many on Bail-Bonds unjustly required? How many on Bonds for performance of Awards that never were broken, and a great many that were not made according to Law? How many on Bonds for performance of Covenants, that never were broken? How many on such great Bonds, that could the Defendant put it to a Tryal, the Damage would be under Forty Shillings? In all which, an innumerable like Cases, by the Writ brought to the Sheriff, or Gaoler, it appears no other than that it was for a real and just Debt or Money lent, and that Prisoner thereby detained or barred of the benefit of this Act. By all which it appears, that such Original Actions ought not to be regarded.

How many Thousands in this Nation Imprisoned for small Debts, to purchase a little Liberty to Maintain their Families, have intralated themselves unawares, by giving Bonds and Judgments in more than One Hundred Pounds to live within the Rules of the several Prisons, who are not otherwise charged with One Hundred Pound Debt, yet miss the benefit of this Act.

And it were to be wished, as a thing reasonable, That whereas Their Majesties have declared in the Preamble of this Act, That they will be as Merciful to poor Prisoners, as any of their Predecessors, an Act to supply what is wanting or doubtful in the last Act may be made, that so Persons Charged with greater Summs than others, being free to Swear themselves as little worth as the smaller Debtors, may have equal benefit with them, many of them being less able to ensure Hardship, than the others.

And should the Justices of the several Countries, at their Sessions, Adjourn to their several Prisons within their Precincts, and give notice to the Goalers and Keepers of Prisons, that at Fourteen Days after they would sit there to hear the Complaints of such as had right to take benefit of the Act, and were refused to be brought to the Sessions by their Keepers, contrary to the Act, for want of Feeing their Keeper, or by the Crafty dealing of some other Persons; as also for hearing the Complaint of such as are Vexatiously, and without just cause, Imprisoned, themselves not knowing for what, it is very probable the Prisons would be well purged and cleared, in the mean time, and less Oppressed for the future.

That Marshalls and Goalers have been often changed, and the present Marshal (without great Rewards) will not Swear for the Prisoner, because he was not Committed in his time, and yet at the same time the Prisoner is detained, and forced to pay Chamber-Rent, and all other Fees, ever since the time of his first Commitment; and it is unreasonable, that it shall be in the power of a Goaler, neither to discharge the Prisoner himself, nor to give way to the Prisoner to procure his own discharge according to Law. And many Prisoners for want of ready Money, have been denied the liberty to go to the Sessions, notwithstanding they had been at great Charge to Summon their Creditors. And others, after they had been discharged, were remanded to Prison for Chamber-Rent, and other Fees, which the Act Remits.